



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 3, 2012

Mr. Bryan McWilliams
Public Safety Legal Advisor
Assistant City Attorney
200 South East Third Avenue
Amarillo, Texas 79101-1514

OR2012-10221

Dear Mr. McWilliams:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 457836 (City ID No. 12-569).

The City of Amarillo (the "city") received a request for information regarding the arrest and ticketing of juveniles.¹ You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we must address the city's obligations under the Act. Section 552.301 of the Government Code describes the procedural obligations placed on a governmental body that receives a written request for information it wishes to withhold. Pursuant to section 552.301(b), the governmental body must request a ruling from this office and state the exceptions to disclosure that apply within ten business days after receiving the request. *See* Gov't Code § 552.301(b). Pursuant to section 552.301(e) of the Government Code, a governmental body is required to submit to this office within fifteen business days of receiving the request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which

¹As you have not submitted the original request for information, we take our description from your brief.

parts of the documents. *See id.* § 552.301(e). The city received the initial request for information on March 15, 2012. The city states, and provides documentation confirming, it sought clarification of the request on March 21, 2012, and received such clarification on April 2, 2012. *See id.* § 552.222(b) (stating if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used); *see also City of Dallas v. Abbott*, 304 S.W.3d 380 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed). Accordingly, the ten-business-day deadline for requesting a ruling from this office was April 16, 2012, and the fifteen-business-day deadline was April 23, 2012. However, the envelope in which you requested a ruling from this office is postmarked April 25, 2012. *See* Gov't Code § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail). Furthermore, as of the date of this letter, the city has not submitted a copy of the original request for information. Consequently, we find the city failed to comply with the procedural requirements of section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption the requested information is public and must be released unless a compelling reason exists to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); *see also* Open Records Decision No. 630 (1994). Generally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third party interests are at stake. Open Records Decision No. 150 at 2 (1977). Because section 552.101 of the Government Code can provide a compelling reason to withhold information, we will address the applicability of this exception to the information at issue.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses information made confidential by other statutes. You raise section 552.101 in conjunction with section 51.14 of the Family Code. Section 51.14 governs law enforcement records pertaining to juvenile delinquent conduct occurring before January 1, 1996. *See* Act of May 27, 1995, 74th Leg., R.S., ch. 262 § 100, 1995 Tex. Gen. Laws 2517, 2591. Because the information at issue pertains to incidents occurring after 1996, section 51.14 is inapplicable in this instance. However, you also raise section 552.101 in conjunction with section 58.007 of the Family Code, which protects juvenile law enforcement records related to delinquent conduct and conduct indicating a need for supervision that occurred on or after September 1, 1997. The relevant language of section 58.007(c) reads as follows:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

(1) if maintained on paper or microfilm, kept separate from adult files and records;

(2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and

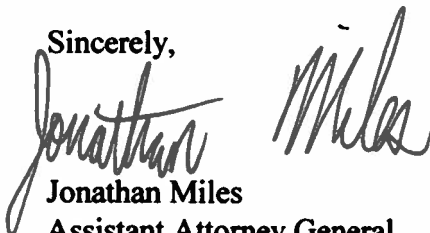
(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

Fam. Code § 58.007(c). In this instance, although the city states that the offenders in the cases at issue are juveniles, the submitted information does not list any identifying information of the suspects. Because the submitted information does not identify any juvenile engaged in delinquent conduct, the city has failed to demonstrate that the requested information consists of juvenile law enforcement records for section 58.007 purposes. Accordingly, the submitted information may not be withheld under section 552.101 on this basis. As you raise no further exceptions, the submitted information must be released.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in dark ink, appearing to read "Jonathan Miles", is written over the typed name.

Jonathan Miles
Assistant Attorney General
Open Records Division

JM/bhf

Ref: ID# 457836

Enc. Submitted documents

c: Requestor
(w/o enclosures)